IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1042 of 1993

P.S.Arunachalam .. Appellant

-Vs-

1. M/s.Sakthi Finance Limited
represented by its Branch Manager
having its registered office
at No.478, Dr.Nanjappa Road
Coimbatore 18,
Coimbatore District.
2. R.Sivagurunathan .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 23.2.1993 and made in A.S.No.31 of 1992 on the file of the Subordinate Judge, Udumalpet, reversing the judgment and decree dated 6.4.1992 and made in O.S.No.894 of 1990 on the file of the District Munsif, Pollachi.

!For Appellant : Mr.N.Maninarayanan

^For Respondents : Mr.T.Ramalingam for R1
No appearance for R2

:JUDGMENT

Aggrieved over the judgment of the learned Subordinate Judge, Udumalpet, the first defendant in a suit for recovery of money has brought forth this second appeal.
2. It was a suit for recovery of a sum of Rs.11,210/- with subsequent interest at 10% per annum till the time of realisation, alleging that the first respondent/plaintiff, a finance company at Pollachi, on the application of the proposal for lease finance by the first defendant dated 3.10.1985 under Ex.A1 and on undertaking to repay the lease amount with interest at the rate of 14% per annum and as per the terms and conditions mentioned in the lease agreement Ex.A2, granted an advance amount of Rs.8,500/- under a lease account for the purchase and lease of the equipment of one BPL colour television set; that the first defendant was a lessee, while the second defendant was a guarantor for the above said finance amount and the lease of the equipment as

per the agreement entered into between the parties under Ex.A2; that the TV was also delivered under Ex.A12 delivery note; that the defendants undertook to pay the lease amount with interest in not less than 24 instalments; but, they defaulted in making the payment, and thus, there was a balance of Rs.7,022/- towards the monthly instalment dues as well as the additional finance charges, as agreed between the parties, amounting to Rs.1,846/- and a transfer fee of Rs.100/-, in all totalling to Rs.8,968/-; and that the defendants were liable to pay the same along with interest.

3. The second defendant was absent and was set ex-parte by the trial Court. The suit was resisted by the first defendant stating that he had applied to the plaintiff for the purchase of a colour T.V. set and signed the agreement for the same; but the agreement was subsequently cancelled by him; that the TV set was not delivered to him, and thus, he was not liable to answer the plaintiff's claim.

4. The trial Court framed the necessary issues, tried the suit and dismissed the same. An appeal by the plaintiff was allowed by the first appellate Court, decreeing the suit in entirety. Hence, this second appeal has been brought forth by the aggrieved first defendant.

5. At the time of admission, the following substantial questions of law were formulated by this Court:

(1) Is the lower appellate Court correct and justified in holding that the signature in Exs.A1 and A2 falling with the disputed signature in Ex.A12 without giving reasons or particulars which come to a conclusion especially when the trial Court has with reference to the same documents pointed out the dis-similarities?

(2) When the appellant before the lower appellate Court had asked for only an order of remand, is the lower appellate Court correct and justified in allowing the appeal and decreeing the suit?

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the first respondent on those contentions.

7. After careful consideration of the rival submissions and scrutiny of the materials, this Court is of the considered view that the appeal carries no merits.

8. The specific case of the plaintiff was that the plaintiff is a finance company; that the first defendant made an application of proposal for lease finance under Ex.A1 on 3.10.1985; that the first defendant also entered into an agreement with the plaintiff under Ex.A2 for a finance of Rs.8,500/- for the purchase of a colour TV, pursuant to which, the colour TV was also delivered under Ex.A12; that the first defendant was a lessee, and the second d efendant was a guarantor; that the first defendant has defaulted in payment of instalments, though he made a few instalments, and hence, the defendants were liable to make the payment of the balance along with other charges. The first defendant denied the claim by stating that though he made an application as found under Ex.A1 and entered into an agreement as found under Ex.A2, subsequently he cancelled the agreement; that there was no delivery of T.V. and hence, he was not liable to pay any amount to the plaintiff. The second defendant conveniently remained ex-parte. It is not in controversy that the first defendant approached the plaintiff, made an application under Ex.A1 and entered into an agreement under Ex.A2. The specific defence was that the said agreement under Ex.A2 was cancelled subsequently by the first defendant. But, there is no material to accept the same. The plaintiff has produced Ex.A12, a

delivery note, wherein it has been clearly stated that a TV set was delivered to the first defendant, and it also bore the signature of the first defendant. The first defendant as D.W.1 deposed that it was not his signature. At that juncture, the first appellate Court has compared the signature of the first defendant under Ex.A12 with his admitted signature in Exs.A1 and A2 and has correctly found that it was signed only by the first defendant.

9. Apart from the above, there were payment of some instalments by the first defendant, which has also been clearly pleaded by the plaintiff and has also been proved by documents. Though the first defendant has made his attempt to escape from the liability, he has admitted that he has made the payment as found under Ex.A14 receipt. A perusal of Ex.A14 would clearly refer to the agreement in question. This would be a strong piece of evidence, which would make it abundantly clear that the first defendant has made a futile attempt to escape from the liability. In such circumstances, the first appellate Court was right in granting the decree in favour of the plaintiff by setting aside the judgment of the trial Court, as the same is erroneous. Therefore, without any hesitation whatsoever, the judgment of the first appellate Court, in view of the available evidence, has got to be sustained.

10. For the foregoing reasons, this second appeal deserves to be dismissed, and it is, accordingly, dismissed, confirming the judgment and decree of the first appellate Court and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:
1. The Subordinate Judge
Udumalpet
2. The District Munsif
Pollachi

3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/